IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA **EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. 3:05-cr-00187-RAH
)	
SAWELIJA TYREE FLOYD)	

RESPONSE TO MOTION FOR NUNC PRO TUNC

The United States of America responds as follows in opposition to the defendant's motion for Nunc Pro Tunc.

- 1. On March 9, 2021, the defendant was indicted by a federal grand jury in the Middle District of Alabama for five felony offenses, case number 3:21-cr-161-RAH.¹
- 2. On April 18, 2022, the defendant pled guilty to two offense: Count 2 - Possession with Intent to Distribute 5 Grams or More of Methamphetamine, and Count 5 - Possession of a Firearm in Furtherance of a Drug-Trafficking Crime.
- 3. On July 28, 2022, the defendant was sentenced to 180 months on Count 2 and 60 months on Count 5 to be served consecutive to the term on Count 2. The judgment in the case notes that, "This term of imprisonment shall run concurrent to the sentence imposed in 3:05cr187-RAH, U.S. District Court, Middle District of Alabama, and consecutive to any term imposed in CC-07-71 in Lee County, AL." (Doc. 126 at 2).
- 4. Also on July 28, 2022, the defendant was sentenced to 60 months in case number 2:05-cr-187-RAH following the revocation of his term of supervised release. The judgment in the

¹ The defendant's motion has the 3:21-cr-161 case number in its heading. The clerk's office filed the motion in the 2:05-cr-187 case. The Government assumes for the purposes of this response that the defendant's motion relates to both cases.

case notes that, "This term of imprisonment shall run concurrent to the sentence imposed in 3:21cr161-RAH, U.S. District Court, Middle District of Alabama, and consecutive to any term imposed in CC-07-71 in Lee County, AL." (Doc. 137 at 2).

- 5. On May 13, 2024, the defendant filed his motion for Nunc Pro Tunc. He does not specify what sentence he is requesting the federal sentence(s) run concurrent with. However, the Government assumes he is referring to a sentence related to case number CC-07-71 in Lee County, AL.
- 6. The defendant does not cite any legal authority to support the proposition that the sentencing court can substantively change a sentence imposed nearly two years ago. In this case, the court specifically considered whether to run the federal sentences concurrent with or consecutive to the Lee County, AL case and it chose to state in the judgment that the sentences were to run consecutive to it. See United States vs. Blanc, 2022 WL 16636207 (11th Cir. 2022) ("Instead of seeking to correct a clerical error or omission, Blanc's motion asked the district court to modify substantively the term of his federal sentence from one that ran consecutive to his state sentences to one that ran concurrent with his state sentences: a modification that would effectively lower his federal sentence by years. Under 18 U.S.C. § 3582(c), a district court has authority to modify a term of imprisonment only in limited circumstances: for example, when the defendant was sentenced based on a sentencing range that was later lowered by the United States Sentencing Commission or when extraordinary and compelling reasons warrant a reduced sentence. See 18 U.S.C. § 3582(c). Blanc has neither argued nor demonstrated that he is eligible for a reduced sentence under section 3582(c).").
 - 7. Like Blanc, the defendant in this case "has neither argued nor demonstrated that he

is eligible for a reduced sentence under section 3582(c)." The motion should, therefore, be denied.

Respectfully submitted this the 23rd day of May, 2024.

JONATHAN S. ROSS UNITED STATES ATTORNEY

/s/ Kevin P. Davidson KEVIN P. DAVIDSON Assistant United States Attorney 131 Clayton Street Montgomery, AL 36104 Phone: 334-223-7280

E-mail: kevin.p.davidson@usdoj.gov

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and mailed a copy of the foregoing to the defendant, addressed to:

Sawelija Floyd #190962 Bullock Correctional Facility 104 Bullock Dr. Union Springs, AL. 36089

Respectfully submitted,

/s/ Kevin P. Davidson KEVIN P. DAVIDSON Assistant United States Attorney 131 Clayton Street Montgomery, AL 36104 Phone: 334-223-7280

Fax: 334-223-7135

E-mail: kevin.p.davidson@usdoj.gov